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JOSEPH E. SPANIOLO, JR.
CLERK

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IN THE SUPREME COURT OF THE UNITED STATES

NO. 90-149

OCTOBER TERM, 1990

THE PEOPLE OF THE STATE OF MICHIGAN
PETITIONER,

v

NOLAN K. LUCAS
RESPONDENT.

ON WRIT OF CERTIORARI
TO THE MICHIGAN COURT OF APPEALS

JOINT APPENDIX

WAYNE COUNTY PROSECUTOR'S OFFICE
DON W. ATKINS*
Principal Attorney, Appeals
12th Floor, 1441 St. Antoine
Detroit, Michigan 48226
Phone: (313) 224-5794
Counsel for Petitioner

MARK H. MAGIDSON*
2110 Penobscot Bldg.
Detroit, Michigan 48226
Phone: (313) 963-4311
Counsel for Respondent

*Counsel of Record

PETITION FOR CERTIORARI FILED
July 16, 1990
CERTIORARI GRANTED,
November 26, 1990

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DOCKET ENTRIES

9/14/84: Defendant retains own counsel
(Kenneth V. Cockrel)

9/18/84: Preliminary examination held

10/25/84: Arraignment on information

11/14/84: Order to adjourn trial granted
in order to conduct polygraph
examination granted (Kenneth
V. Cockrel)

1/31/85: ("Case Inquiry") Assigned for
trial (Attorney: Gayle Fort
Williams)

2/8/85: Order to adjourn trial granted
due to recent appointment of
new attorney

2/8/85: Substitution of attorney (by
Gayle Fort Williams)

5/14/85: Waiver trial held

5/15/85: Waiver trial held, defendant
convicted

7/2/85: Defendant sentenced to two
concurrent terms of 3 years, 8
months to 15 years

4/23/87: Conviction reversed by the Michigan Court of Appeals

9/27/89: Michigan Supreme Court remands case to the Michigan Court of Appeals for harmless error analysis

3/7/90: On remand, conviction reversed by Michigan Court of Appeals

6/5/90: Leave to appeal denied to the Prosecution by the Michigan Supreme Court

**MOTION TO ALLOW EVIDENCE
OF PRIOR SEXUAL INTERCOURSE**

THE CLERK: The People versus Nolan Lucas, Case No. 84 479160.

(Defendant and both counsel present in the court room.)

THE COURT: Is there a motion to be placed on the record?

MS. WILLIAMS: Yes, Your Honor, Gayle Williams for the defendant.

Your Honor, I am asking that the Court allow, throughout this trial, testimony concerning prior sexual intercourse between the defendant and the complainant, even though I know it goes against the Statute.

First of all, I would like to say that past the time that a motion could have been made I was appointed as counsel for the defendant. Secondly, much of what the defendant has to testify to concerns the relationship he had with the complainant over a very long period of time.

THE COURT: Your motion is what?

MS. WILLIAMS: For you to allow evidence, testimony of the prior sexual intercourse together.

THE COURT: With the complainant?

MS. WILLIAMS: Yes.

MR. THOMAS: Good morning, Your Honor. Philip Thomas, on behalf of the People.

Your Honor, I would like to direct the Court's attention to MCLA 750.520(j). I would state to the Court that the language contained in there regarding prior sexual conduct with anyone in the world, even if it's the defendant is clearly laid out as far as procedures to be followed. The Statute says if defense counsel intends to use or go into any past sexual contact with any one, as I said, in the world, including the defendant, a motion has to be filed -- the Statute says shall be filed within 10 days of the arraignment on the information. I understand that Miss Williams was appointed

after Mr. Cockrel had already conducted the preliminary examination and part of the arraignment on the information, however, we have had a lot of time to lapse between the time that she was appointed and today's date.

The only other factor I would like to point out to the Court is that the Michigan Court of Appeals, as well as Supreme Court, have held over and over again that those rights that are referred to in our Rape Shield Statute are rights that belong to complaining witnesses in these criminal sexual conduct cases. They are not rights to be taken lightly and even waived by prosecutors in trials like this. Those are rights that belong to the complainant, Miss Wanda Brown, in this case, and I feel obliged to object to counsel's motion.

MS. WILLIAMS: Your Honor, I understand the untimeliness of my motion, but certainly Mr. Lucas has rights too, and that is the right to defend himself as

vigorously as he possibly can. Secondly, he has the right to freedom.

Much of Mr. Lucas' defense, as I said, centers around the sexual intercourse that he did have in previous months prior to the day of the incident.

THE COURT: Why was not this motion made earlier?

MS. WILLIAMS: Your Honor, I was not aware that I could have made it because Mr. Lucas had a different attorney. In fact, I was appointed to this case one week prior to trial initially when he had his first attorney.

THE COURT: Let me check the Statute. If the Statute says I am precluded from it -- are you familiar with it?

MS. WILLIAMS: Yes.

THE COURT: What does it say?

MR. THOMAS: 750.520(j). It's not in the volume, Your Honor. It's in the advanced pocket part to the Statute. The supplement to volume 39, Your Honor.

THE COURT: None of the requirements

set forth in 750.520(j), subsection 2, have been complied with; and among others, other than filing 10 days after the arraignment on the information, that is, the Court should have an in camera hearing on the evidence, which has not been done. Unless this information is filed or discovered during the course of the trial, I would have to (sic) right to go into that, but your motion is respectfully denied.